

Chapter ERC 91

AUTHORIZATION AND GENERAL PROVISIONS

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Note: Chapter PC 1 was renumbered Chapter ERC 91 under s. 13.92 (4) (b) 1., Stats., Register December 2014 No. 708.

ERC 91.01 Authorization. The rules in chs. ERC 91 to 95 are adopted by the commission pursuant to ss. 230.44 (4) (bm), 230.45 (1) (i) and (3) and 230.89 (1), Stats., and relate to the commission's jurisdiction under s. 230.45, Stats.

History: Cr. Register, March, 1980, No. 291, eff. 4–1–80; r. and recr. Register, August, 1987, No. 380, eff. 9–1–87; am. Register, May, 1996, No. 485, eff. 6–1–96; correction made under s. 13.92 (4) (b) 7., Stats., Register January 2011 No. 661; correction made under s. 13.92 (4) (b) 7., Stats., Register December 2014 No. 708.

ERC 91.02 Definitions. In the commission's rules:

(1) "Agency" means an association, authority, board, commission, department, independent agency, institution, office, society or other body in state government created or authorized to be created by the constitution or any law.

(2) "Appeal" means a written request for relief filed with the commission and relating to one or more employment actions where the statutory basis for review does not provide for the commission to conduct an investigation.

Note: This definition includes actions filed under s. 230.45 (1) (a) and (d), Stats., and grievances filed under s. 230.45 (1) (c), Stats.

(3) "Appellant" means a person who, alone or with others, has filed an appeal.

(4) "Case" means a complaint or an appeal.

(5) "Chairperson" means the chairperson of the commission.

(6) "Commission" means the employment relations commission.

(7) "Commissioner" means a member of the commission.

(8) "Complainant" means a person who, alone or with others, has filed a complaint.

(9) "Complaint" means a written request for relief filed with the commission and relating to one or more employment actions where the statutory basis for review provides for the commission to conduct an investigation.

(10) "Filing" means the physical receipt of a document at the commission's office.

(11) "Hearing examiner" means the person designated by the commission pursuant to s. 227.46 (1), Stats., to preside over an administrative hearing.

(12) "Meeting" means a convening of the commissioners that falls within the definition set forth in s. 19.82 (2), Stats.

(13) "Party" means a petitioner or a respondent.

(14) "Petitioner" means an appellant or a complainant.

(15) "Presiding authority" means the hearing examiner or, where the hearing is before the commission as a whole, the commissioners.

(16) "Probable cause" means a reasonable ground for belief, supported by facts and circumstances strong enough in themselves to warrant a prudent person to believe that a violation probably has been or is being committed as alleged in the complaint.

(17) "Respondent" means the person or state agency whose interests are adverse to those of the petitioner or who will be directly affected by the commission's decision.

(18) "Representative" means an attorney or any other agent of a party who has been authorized by the party to provide representation before the commission, where authorized by law.

History: Cr. Register, March, 1980, No. 291, eff. 4–1–80; r. and recr. Register, August, 1987, No. 380, eff. 9–1–87; am. (16), Register, May, 1996, No. 485, eff. 6–1–96; correction made under s. 13.92 (4) (b) 6., Stats., Register December 2014 No. 708.

ERC 91.03 Parties. (1) **CHANGE OF ADDRESS.** Parties shall promptly notify the commission, in writing, of any change of address during the pendency of the case.

(2) **SUBSTITUTION.** If a petitioner dies during the pendency of a case, the deceased petitioner's successor or personal representative shall, upon motion, be substituted for the petitioner. A case shall be held open for a reasonable period to permit substitution by the successor or personal representative.

History: Cr. Register, August, 1987, No. 380, eff. 9–1–87.

ERC 91.04 Representatives. (1) A party is entitled to appear in person or by or with the party's representative in any case before the commission except as otherwise prohibited by law. The representative shall be presumed to have full authority to act on behalf of the party, including the authority to file or withdraw a case.

(2) One who has entered an appearance as the representative of a party shall be considered as the representative of that party unless and until a written withdrawal of representation is filed.

History: Cr. Register, March, 1980, No. 291, eff. 4–1–80; renum. from PC 1.06 and am., cr. (2), Register, August, 1987, No. 380, eff. 9–1–87.

ERC 91.05 Filing and service of papers. (1) With the exception of the initial complaint and the initial appeal which will be served by the commission pursuant to s. ERC 92.03, and papers that are filed as part of an investigation, all papers filed by a party with the commission shall also be served by that party on all other parties to the case.

(2) Papers may be served either personally or by mail. Service by mail is complete upon mailing. That is, for purposes of service, the effective date is the date of mailing, not receipt. Filing is complete on receipt.

(3) The filing of any paper required to be served constitutes a certification that a copy of the paper has been timely served on all parties required to be served unless the person filing the paper states otherwise in writing. No affidavit, certificate, or admission of service need be filed with the commission.

(4) When a party is represented by a representative, service shall be made upon that representative. For purposes of service, where more than one petitioner has filed the case, the first-named

petitioner shall be considered the sole petitioner, unless another petitioner is specifically identified as the agent for service.

History: Cr. Register, August, 1987, No. 380, eff. 9–1–87; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register January 2011 No. 661; **correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register December 2014 No. 708.**

ERC 91.06 Captions. All papers shall, to the extent possible, contain a caption setting forth the names of the parties and the case number.

History: Cr. Register, March, 1980, No. 291, eff. 4–1–80; renum. from PC 1.04 and am., Register, August, 1987, No. 380, eff. 9–1–87.

ERC 91.07 Time. Unless otherwise provided by chs. ERC 91 to 95, orders of a hearing examiner or of the commission and time periods set forth in correspondence from the commission, commissioners or staff shall refer to calendar days. The day an order is made or entered shall not count as one of the prescribed days. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday in which case the last day shall be the next day that is neither a Saturday, a Sunday or a legal holiday. As used in this section “legal holiday” means any holiday listed in s. 230.35 (4) (a), Stats.

History: Cr. Register, March, 1980, No. 291, eff. 4–1–80; renum. from PC 1.09 and am., Register, August, 1987, No. 380, eff. 9–1–87; am. Register, May, 1996, No. 485, eff. 6–1–96; correction made under s. 13.92 (4) (b) 7., Stats., Register January 2011 No. 661; **correction made under s. 13.92 (4) (b) 7., Stats., Register December 2014 No. 708.**

ERC 91.08 Motions. (1) HOW MADE. An application to the hearing examiner or the commission for an order shall be by motion which, unless made during a hearing or a prehearing conference, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought.

(2) SUPPORTING PAPERS. Any briefs or other papers in support of a motion, including affidavits and documentary evidence, shall be filed with the motion.

(3) MOTIONS TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION. Any party may move at any time to dismiss a case on the ground the commission does not have subject matter jurisdiction. The commission may raise issues on its own motion relating to its jurisdiction to hear the matter or some matter raised in an appeal or complaint. Each party shall be afforded an opportunity to file written arguments regarding the motion.

Note: Because a case will normally be dismissed if a jurisdictional objection is sustained, any motion to dismiss due to lack of subject matter jurisdiction should be filed as soon as the basis for it becomes apparent.

History: Cr. Register, March, 1980, No. 291, eff. 4–1–80; renum. from PC 1.03 and am. Register, August, 1987, No. 380, eff. 9–1–87; am. (3), Register, May, 1996, No. 485, eff. 6–1–96.

ERC 91.09 Briefing schedules. The hearing examiner or the commission may establish a briefing schedule on any issue

or motion pending before it and may decline to consider any brief that is filed after the brief is due.

History: Cr. Register, August, 1987, No. 380, eff. 9–1–87.

ERC 91.10 Consolidation. The commission may order consolidation of any case with any other case involving the same parties or one or more issues arising substantially out of the same circumstances or closely related circumstances. Consolidation may be for investigation, hearing, decision or a combination thereof. Nothing in this section limits the right of a party to make a motion to consolidate or to object to the commission’s motion.

History: Cr. Register, August, 1987, No. 380, eff. 9–1–87; am. Register, May, 1996, No. 485, eff. 6–1–96.

ERC 91.11 Withdrawal. Subject to the approval of the commission, a petitioner may withdraw a case at any time prior to a final decision by the commission. The withdrawal request should be in writing and should be signed by the petitioner or the petitioner’s representative.

History: Cr. Register, August, 1987, No. 380, eff. 9–1–87.

ERC 91.12 Dismissals. Any dismissal order issued by the commission shall be with prejudice unless otherwise expressly stated. The commission may require the filing of a copy of any settlement agreement prior to dismissing a case.

History: Cr. Register, August, 1987, No. 380, eff. 9–1–87.

ERC 91.13 Pay status for state employee parties and state employee witnesses in commission cases.

(1) PAY STATUS OF STATE EMPLOYEE PARTIES. State civil service employees who, as parties, are interviewed as part of commission investigations or appear at prehearing conferences, conciliation sessions, oral arguments or hearings, whether held in person or via telephone, shall do so without loss of state salary and with reimbursement by the employing agency for travel expenses in accordance with the uniform travel schedule amounts established under s. 20.916 (8), Stats.

(2) PAY STATUS OF STATE EMPLOYEE WITNESSES. State civil service employees who are interviewed as part of commission investigations or attend hearings, whether held in person or via telephone, as witnesses shall do so without loss of state salary and with reimbursement by the employing agency for travel expenses in accordance with the uniform travel schedule amounts established under s. 20.916 (8), Stats., unless the hearing examiner or the commission determines that their testimony was or would have been irrelevant, immaterial or unduly repetitious.

History: Cr. Register, March, 1980, No. 291, eff. 4–1–80; renum. from PC 1.10 (2) and (3) and am., Register, August, 1987, No. 380, eff. 9–1–87.